IN THE HIGH COURT OF DELHI

C.R.P.No.1111/2003

#	Mr.Rajat Taneja	.....	Petitioner
	VERSUS		
$	Ms.Harmeeta Singh	.....	Respondent

C.R.P.No.1114/2003

#	Mr.Rajat Taneja	.....	Petitioner
	VERSUS		
$	Ms.Harmeeta Singh	.....	Respondent

CM(M) No.16/2005

#	Mr.Rajat Taneja	.....	Petitioner
	VERSUS		
$	Ms.Harmeeta Singh	.....	Respondent

Through : Dr.Shyamla Pappu, Sr. Adv. with
Mr.R.Krishnamoorthy, Adv.
for the petitioner.

Ms.Aanchal Mullick, Adv.
for the respondent.

% DATE OF DECISION: 25.07.2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y

2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Y

: **PRADEEP NANDRAJOG, J.**

1. Vide CRP No.1111/2003 petitioner/husband has challenged the order dated 6.8.2003 passed by the learned Matrimonial Judge deciding respondent's application under Section 24 of the Hindu Marriage Act, granting monthly maintenance of Rs.11 lacs to the wife with effect from the date of her application i.e. 21.10.2002 till date of the order dated 6.8.2003. I note that the period for which maintenance has been awarded is 9 months and 16 days. Litigation expenses in sum of Rs.1 lac have been awarded in addition.

2. Vide CRP No.1114/2003 petitioner (husband) has challenged the order dated 21.7.2003 dismissing his application under Order 9 Rule 7 CPC.

3. Vide CM(M) No.16/2005 petitioner (husband) has challenged the order dated 6.8.2003 passed by the learned Matrimonial Judge allowing application filed by the wife under Section 24 of the Hindu Marriage Act.

4. It is stated in CM(M) No.16/2005 that revision petition against the order dated 6.8.2003 granting interim maintenance to the wife cannot be challenged by way of a civil revision petition in view of a decision of the Supreme Court

reported as *Shiv Shakti Coop. Housing Society, Nagpur v Swaraj Developers & Ors,* AIR 2003 SC 2434. Therefore remedy is being invoked under Article 227 of the Constitution of India.

5. Thus, at the outset I dismiss CRP No.1111/2003 as withdrawn.

6. For the sequence of events and various orders passed by the learned Matrimonial Judge, and as noted here-in-under, a fairly comical situation has come into existence.

7. The parties got married on 24.3.2002. The marriage broke down in less than 5 months. Petitioner, a resident of the United States of America filed a divorce petition in the United States of America. Admittedly, he has obtained an ex-parte decree of divorce from a Court having matrimonial jurisdiction in the United States of America.

8. The respondent was served with the notice of motion taken out by the petitioner before the Matrimonial Judge in the United States of America. She opposed grant of divorce by challenging the jurisdiction of the Courts in United States of America. But after filing the reply she absented. Thus, it resulted in the grant of an ex-parte decree for divorce in favour of the petitioner.

9. In India, respondent sought annulment of the marriage by seeking a decree for divorce. The petition was

filed within less than 1 year of the marriage. Remedy under Section 12(1)(c) read with Section 13 of the Hindu Marriage Act was invoked.

10. As per the mandate of Section 14 of the Hindu Marriage Act respondent sought waiver of the statutorily prescribed period i.e. 1 year with effect from the date of the marriage within which period except after obtaining from the court after showing special circumstances petition seeking annulment of the marriage could not be filed.

11. A strange thing happened before the learned Matrimonial Judge on 3.10.2002 when the petition seeking divorce accompanied by the application under Section 14 of the Hindu Marriage Act was filed.

12. 2 orders of even date were passed.

13. Vide first order dated 3.10.2002 notice was issued in the petition seeking annulment of the marriage by way of decree for divorce. The notice was returnable for 2.12.2002.

14. A second order of even date was passed. It records as under:-

> "I have heard the learned counsel for the petitioner on the application under Section 14 of the Hindu Marriage Act. No valid and legal ground is made out by the petitioner for moving this application before the expiry of one year. Accordingly, the application is dismissed."

15. It could be argued that having dismissed the application filed by the respondent invoking Section 14 of the Hindu Marriage Act, learned Matrimonial Judge was obliged to dismiss the petition seeking divorce and therefore proceedings conducted by the learned Trial Judge thereafter are without any authority of law.

16. Per contra, it could be argued that it was a curable defect and proceedings are irregular and not illegal.

17. Be that as it may, since notice was issued in the main petition, learned Judge awaited return of the notice for the next date i.e. 2.12.2002. In the meanwhile, on 8.11.2002 the learned Judge took cognizance of an application filed by the respondent under Section 151 CPC praying that the petitioner be served through the employer.

18. On 8.11.2002 learned Judge allowed respondent's application filed under Section 151 CPC and directed service upon the petitioner returnable for 2.12.2002 at the address of the employer. Learned Judge was on leave on 2.12.2002. The Court Reader adjourned the matter for 16.12.2002. On which date, once again the learned Judge was on leave. Reader renotified the matter for 17.12.2002. On said date, fresh notice was issued returnable for 27.1.2003. Service not being effected, fresh notice was issued returnable for 18.3.2003. On

said, petitioner was served at the address of the employer. None appeared for him. He was proceeded against ex-parte. Matter was renotified for 23.4.2003 for ex-parte evidence. On said date, ex-parte evidence was led. Arguments were advanced immediately thereafter. Matter was adjourned for 1.5.2003 for orders.

19. On 1.5.2003 counsel appeared for the petitioner before judgment could be pronounced and requested for adjournment stating that petitioner intends to file an application under Order 9 Rule 7 CPC seeking recall of the order dated 18.3.2003.

20. On same date, necessary application under Order 9 Rule 7 CPC was filed. Another order of even date was passed issuing notice of the said application to the respondent.

21. In the interregnum, as noted above, on 21.10.2002, the respondent filed an application under Section 24 of the Hindu Marriage Act, notice whereof was issued to the respondent.

22. Learned Judge vide order dated 21.7.2007 dismissed petitioner's application under Order 9 Rule 7 CPC. Vide a separate order of even date, petition for divorce filed by the respondent was allowed.

23. The learned Judge consigned the file to the record

room without realizing that respondent's application under Section 24 of the Hindu Marriage Act was pending.

24. On an oral mention by the respondent to the learned Judge, he took up respondent's application under Section 24 of the Hindu Marriage Act on 6.8.2003 and disposed of the same granting to her monthly maintenance in sum of Rs.11 lacs.

25. The learned Judge also took cognizance of an application filed by the respondent under Section 152 CPC praying that the order dated 3.10.2002 dismissing her application under Section 14 of the Hindu Marriage Act be corrected. The learned Judge passed the following order on 6.8.2003:-

> "By this order, I shall dispose of application u/s 152 read with Section 151 CPC filed by the petitioner for decision of the application under Section 14 of the Hindu Marriage Act filed by them along with the petition. The said application was dismissed on 3.10.2002, but in this case proceedings kept going on and petitioner was granted ex-parte decree for divorce on the ground of cruelty and decree have already been passed and petitioner has taken the copy of decree. Accordingly, order dated 3.10.2002 is recalled and application under Section 14 of the Hindu Marriage Act is allowed."

26. Surprisingly enough, petitioner has not challenged the aforesaid order dated 6.8.2003.

27. Fortunately for the petitioner he was rightly advised by the counsel to seek setting aside of the ex-parte decree for

divorce by filing an application under Order 9 Rule 13 CPC for the reason when application under Order 9 Rule 7 CPC was filed by the petitioner, as noted above, arguments had concluded in the petition filed by the respondent and matter was renotified for judgment. Thus, on the date when application under Order 9 Rule 7 CPC was filed it could not be said that the Court had adjourned the hearing of the suit ex-parte.

28. I note the decision of the Supreme Court reported as AIR 1964 SC 993 *Arjun Singh v Mohindra Kumar & Ors* wherein it was held that where arguments have been concluded and suit stands adjourned for decision, only remedy is to await the decision and file an application under Order 9 Rule 13 CPC.

29. For record, I may note that the petitioner's application under Order 9 Rule 13 CPC was dismissed. I may further note that the petitioner has filed an appeal registered as FAO No.301/2004 challenging the ex-parte decree dated 21.7.2003 and the order dated 25.8.2004 dismissing his application under Order 9 Rule 13 CPC.

30. Thus, issues pertaining to the legality of the ex-parte decree, the order dated 6.8.2003 allowing respondent's application under Section 152 CPC and recalling order dated 3.10.2002 and granting permission under Section 14 of the Hindu Marriage Act to present the petition within 1 year of the

date of marriage would be adjudicated in said appeal.

31. The question, whether the entire proceedings were vitiated or not and whether order dated 6.8.2003 could be passed rectifying the order dated 3.10.2002 and what is the effect of the learned Judge not recording, even in the order dated 6.8.2003, that a case of exceptional hardship or exceptional deprivity has been made out entitling respondent to have the statutory cooling period of 1 year waived would be adjudicated in the said appeal.

32. Thus, CRP No.1114/2003 is disposed of as infructuous but clarifying that issue as noted herein above would be decided in FAO No.301/2004 and all permissible pleas would be available to the petitioner to question the ex-parte decree for divorce as also the legality of the order dismissing his application under Order 9 Rule 13 CPC.

33. Pertaining to the challenge laid to the order dated 6.8.2003 granting monthly maintenance of Rs.11 lacs to the respondent suffice would it be to note that the learned Judge became functus officio when he granted the decree of divorce on 21.7.2003. That apart, learned Judge failed to appreciate that petitioner had already filed an application under Order 9 Rule 7 CPC pointing out that he was not served in the petition for divorce. Learned Judge failed to appreciate that he ought to

have at least ensured that the petitioner receives a copy of the application filed by the respondent under Section 24 of the Hindu Marriage Act. He ought to have granted an opportunity to the petitioner to file reply thereto. Surprisingly enough, on an oral mention, after he had consigned the file to the record room on 21.7.2003 learned Judge resummoned the file from the record room and passed the order dated 6.8.2003 allowing respondent's application under Section 24 of the Hindu Marriage Act.

34. On the short ground of denial of principles of natural justice, petitioner is entitled to have the order dated 6.8.2003 granting monthly maintenance to the wife to be set aside.

35. Ordered accordingly.

36. There is another reason why the order has to be set aside.

37. Learned Judge has treated the income of the husband in the United States of America as the measure to grant monthly maintenance to the wife who is in India.

38. As held by the Supreme Court in the decision reported as 2002 (6) SCC 281 *United India Insurance Vs. Patricia Jean Mahajan*, when compensation has to be paid in India to the claimants of a deceased working abroad, standard of living in India, cost of living in India and other related factors

have to be considered and in light of the said facts considering income of the husband in a foreign country further taking note of the fact as to what is the cost of living in the said foreign country, loss of dependence has to be worked out.

39. Similar principles would apply to grant of monthly maintenance to a wife stationed in India but husband being abroad and earning in foreign currency.

40. Unfortunately, no proceedings are pending before the Matrimonial Judge. Thus, no useful purpose would be served in remanding the matter to the learned Matrimonial Judge for fresh adjudication on respondent's application under Section 24 of the Hindu Marriage Act, more so when he became functus officio on 21.7.2003 when decree for divorce was granted.

41. I draw the curtains by recording that it would be open for the respondent to move an appropriate application in FAO No.301/2004 pending in this Court wherein the husband has challenged the ex-parte decree of divorce as also the order dated 25.8.2004 dismissing his application under Order 9 Rule 13 CPC. Respondent would be permitted to pray before the learned Appellate Judge to take a decision on her right to seek interim maintenance pursuant to the application filed by her under Section 24 of the Hindu Marriage Act.

42. Subject to the clarificatory rights of the respondent herein above noted, CM(M) No.16/2005 stands disposed of quashing the order dated 6.8.2003 awarding monthly maintenance of Rs.11,00,000/- to the respondent as also granting her litigation expenses in sum of Rs.1,00,000/-.

43. No costs.

July 25, 2007 (PRADEEP NANDRAJOG)
dk JUDGE